IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7713 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MIRU ADAM RAHIMA & 8 - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR PC Master for petitioners.
Mr. Uday Bhatt, Asst. GOVERNMENT PLEADER for Respondent(s)

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE M.R. SHAH
Date : 20/06/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Mr. P.C. Master, learned counsel for the petitioners and Mr. Uday Bhatt, learned Assistant Government Pleader for the respondents.

2. By this petition under Article 226 of the Constitution of India, the petitioners No. 1 to 6 who are working as 'Simrakhas', petitioner No.7 which provides Simrakhas to the land-holders, and petitioner No.8 who claims to be President of Gujarat Khedut Samaj Gujarat, Village Bareja, Taluka Dascroi, District Ahmedabad, are challenging the constitutional validity of Section 2(e), definition of “Private Armed Force”, Section 3, Section 4 and Section 5 of The Gujarat Prohibition of Maintenance of Private Armed Force Act, 1989 (9 of 1989) submitting inter alia that a bare perusal of the provisions of law would show that these are ultra vires the Constitution, affect the fundamental rights of the petitioners and the landholders and adversely affect their right to livelihood.

3. Mr. Master, learned counsel for the petitioners, after taking us through the definition of “Private Armed Force” contained in Section 2(e), firstly submitted that if the person wants to engage certain people who are not armed, then the provisions of Act would not allow him to engage such people. Referring to Section 3 and 4, he submitted that on one side the Government says that no landholder shall by himself or through any other person keep and maintain any Private Armed Force for protection of land or crop or otherwise and at the same time under Section 4 of the Act the State allows to keep 2 persons as “Private Armed Force” and also gives an authority to a Gram Panchayat or a Nagar Panchayat as the case may be to allow engagement or employment of more than 2 persons. Referring to Section 5, it was submitted that a person who is employing Private Armed Force has been put to unnecessary restriction, and in a given case the officer in-charge of the police station within

whose jurisdiction the land-owner's lands are falling may create problem by not allowing the landowner to engage a particular person or may ask the land-owner to terminate the service of such Private Armed Force. He submitted that the provisions contained in Section 2(e), 3, 4 and 5 if are read in juxtaposition then it would clearly appear that the provisions are ultra vires the Constitution and deserve to be quashed or in the alternative are required to be read down in a manner so that the landowners/landholders and Simrakhas do not suffer unnecessarily.

4. The State Government, in its reply, has supported the provisions of law and has submitted that to avoid unnecessary disharmony and bad blood between Adivasis and the landowners whose lands are situated in Adivasi belts and to avoid creation of Private Armed Forces, the State Government has promulgated the Ordinance and

thereafter enacted the Act. An incident of murder and attack by Adivasis and attack on Adivasis has also been referred to in the reply to show that certain societies/associations were bringing such private armed persons from outside the State and such persons were creating problems. The State has also said that in various areas complaints of the citizens were received against such armed persons who were though engaged to protect the property but were engaged in other criminal activities. It is submitted that a harmonious construction of Section 2(e), 3, 4 and 5 would simply show that the State Government is much interested in maintenance of public tranquility, law and order, and for that only reason the State wants to put a check on creation of Private Armed Force. It is submitted that a perusal of the provisions of the Act would show that the Act is a prohibitory Act and at the same time it permits employment of Private Armed Guards but under the supervision

and control of the State Government through its Home Department.

5. We have heard the parties at length and have perused the provisions of law.

6. Section 2(e), the vires of which has been challenged on the ground that it discriminates and does not allow any person to engage a person who is not armed, reads as under;

> (e) “private armed force” means a force consisting of one or more persons who are armed for the whole or part time and maintained by, or subject to the control of, a person other than the Union or the State Government, but does not include a person employed as a helper or sathi or an agricultural labourer who is not armed.”
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> *Explanation:- A person shall be deemed to be armed if he has in*

his possession an article of any description designated or adapted as a weapon of offence or defence, not being an article commonly used for domestic or agricultural purposes, such as a lathi, a sickle, an axe or a Dharia.

7. It is to be seen from the very definition quoted above that a “Private Armed Force” would mean a force consisting of one or more persons who are armed for the whole or part time and maintained by or subject to the control of, a person other than the Union or the State Government. The definition says that, a Private Armed Force would not include a person employed as a helper or sathi or an agricultural labourer who is not armed.

8. The very first challenge that a person who is not armed cannot be employed as a guard or simrakha, prima facie, would become misconceived

because the law says that the definition would not include a person who is employed as a helper or a sathi or an agricultural labourer or who is not armed.

9. Not only this, the Explanation appended to sub-section 2(e) further provides that a person who is armed with an article commonly used for domestic or agricultural purposes, such as lathi, a sickle, or an axe or a dharia, would not be deemed to be an armed person falling within the mischief of the definition of “Private Armed Force”. From the very definition, it would appear that many of the articles which could be used as articles for offence or defence but which are also commonly used for domestic or agricultural purposes shall not be deemed to be arms for the purposes of the definition. A person who is armed with an article which is used for domestic or agricultural purposes including a lathi, a sickle, an axe or a dharia if he is not

deemed to a member of the Private Armed Force, then it would not be proper or legal to say that the definition puts a ban or a check on the rights of a landholder to have private guards who are not armed. The challenge to the definition “Private Armed Force”, as contained in Section 2(e), being misconceived, is rejected.

10. So far as vires and constitutional validity of Section 3 and 4 of the Act are concerned, we will have to see to the Preamble and Statement of the Act. The Preamble says that it is an Act to regulate in the interest of public order the keeping and maintenance of private armed force for the protection of land or crop in the State of Gujarat. From the language employed in the Preamble, it would clearly appear that the Act has been brought into force to regulate in the interest of public order the keeping and maintenance of private armed force. It cannot be said that the State is not under a

liability or a duty to maintain the law and order and maintain the public tranquility and peace. If the State Government is denuded of its powers to maintain the peace, tranquility and public order, then it would lead to anarchism. If the State Government wants to regulate in the interest of public order the keeping and maintenance of Private Armed Force for protection of land or crop in the State of Gujarat, then prima facie, a wrong cannot be found with the Act.

11. It would also be necessary to refer to the Statement and object appended to the Act;

> "In order to render protection against acts of unauthorised possession of land or unauthorised cutting of crops grown on land, a landholder employs armed persons popularly called Simrakhas. Sometimes,

activities of such armed persons result in disturbance of public order and thereby create the question of maintaining the public order in the State. In order to maintain public order in the State, it is considered necessary to regulate employment of armed persons by a landholder so that persons who are of doubtful character and antecedents are not employed for the purpose of protection of land and crop. A Bill called the Gujarat Prohibition of Maintenance of Private Armed Force Bill, 1988 was introduced in the Gujarat Legislative Assembly on the 29th February, 1988 but it would not be taken up for consideration by the House for want of time. Therefore, as the Gujarat Legislative Assembly is not in session, this Ordinance is promulgated to achieve the aforesaid object."

From the Statement, it would clearly appear that the Act was required to be brought into force and action in order to render protection against the acts of unauthorised possession of land or unauthorised cutting of crops grown on land, to a landholder. The Statement further says that certain Simrakhas who are employed by a landholder are entering into activities which result in disturbance of public order and thereby create the question of maintaining the public order in the State. From the very statement and object, it would clearly appear that the State Government is not interested in curtailing the right of a private person to have his property protected, but the State Government only wants to maintain the public order in the State so that each and every citizen can live peacefully and a private army in the name of or under the garb of private guards is not created.

12. It is not unknown to the human race that

people who achieve power and gather strength always enter into criminal activities by employing or engaging such people who are hooligans, gundas armed with weapons and are ready to act as mercenaries. Such people after collecting these persons try to control the law and order and thereby create a realm of terror. It would always be the duty of the State Government to see that one person does not exploit another because exploitation of one by another goes against the very fundamental structure of the Constitution. The State Government if shows its interest in maintaining the law and order so also public order and tranquility to maintain the peace and peaceful administration of the public at large by controlling the private persons in engaging the armed force, then, prima facie, it cannot be said that the action of the State Government is bad.

13. Section 3 and Section 4 of the Act read

as under;

> “**3. Prohibition against keeping and maintenance of private armed force.**__ No landholder shall, either himself or through any other person, keep and maintain any private armed force for protection of land or crop or otherwise.
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> **4. Employment by a landholder of persons who are armed.**__ Notwithstanding anything contained in section 3 but subject to the provisions of section 5, a landholder may employ for the purpose of protection of his land or crop not more than two persons who are armed:
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> Provided that where a gram panchayat or a nagar panchayat is satisfied that having regard to the extent of land or crop within its jurisdiction employment of more than two persons who are

armed is necessary, the panchayat may employ more than two such persons but not more than such number of such persons as may be prescribed."

14. Section 3, though provides a ban and puts a restriction on a landholder from keeping private armed force for protection of land or crop or otherwise, but Section 3 cannot be read dehors the Section 4 of the Act. Section 3 and Section 4 are to be read in juxtaposition and are to be harmoniously construed. Independent and exclusive reading of Section 3 and 4 of the Act are likely to lead to problems and therefore we are of the considered opinion that Section 3 and Section 4 are to be read as supplement to each other. Though Section 3 puts a ban on the authority of landholder to keep and maintain any Private Armed Force but Section 4 gives an authority to every landholder to engage two but not more than two persons who are armed. In a

situation like the present where the State Government authorises a person to engage two persons and not beyond that and also gives a further right that looking to the extent of land or crop within the jurisdiction of a Gram Panchayat or a Nagar Panchayat, such Gram Panchayat or Nagar Panchayat would be entitled to allow such landholder to engage more than 2 persons, then it cannot be said that any right of a landholder is curtailed or is brought to an end. In a given case, a person, who does not have a large piece of land, is allowed to have more than 10 armed persons, then he may create terror in the vicinity. If in the circumstances an authority is given to the Gram Panchayat and/or Nagar Panchayat to look into the circumstances weigh the stock of the situation and then grant permission, then it cannot be said that the power is curtailed. Even otherwise, if the act or actions of the Gram Panchayat or Nagar Panchayat are unreasonable or are putting

unnecessary restrictions on the right of a person, then such landholder would always be entitled to challenge the action of such Gram Panchayat or Nagar Panchayat. It cannot be said that a person who is entitled to employ only two can always engage more than two. The stock of situation will have to be assessed objectively by a person with dispassion. In the present scenario, it is to be found that in number of other States, Private Armed Forces in different names have been kept and maintained. These armed forces are, in fact, creating problems. They are exploiting the people and are entering into criminal activities. To put a check on creation of a private army and to curtail the criminal activities of such a gang which has been formed in the name of a “Private Armed Force”, if the State Government wants to take some action, then the action of the State cannot be said to be Unconstitutional.

15. Section 5 of the Act reads as under;

> **5. Restriction on employment by landholder.**___ [1] A landholder, after employing a person under section 4 and a person after accepting such employment shall, furnish such information, within such time and in such manner, as may be prescribed, to the officer in charge of the police station having jurisdiction over the area in which the land held by the landholder,or in which the landholder is interested, is situate.
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> [2] Where on receipt of the information furnished under sub-section (1), the officer in charge of the police station, after making such inquiry, as he deems fit, is of the opinion that such person is not fit to be so employed, the officer
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> in charge of the police station shall inform the landholder accordingly.

> [3] Where a landholder is informed by the officer-in-charge of the police station under sub-section [2] that the person employed by such landholder is not fit to be so employed, the landholder shall, within fifteen days after he is so informed, terminate employment of such person as a member of his armed force.
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> Provided that the landholder may not terminate the employment of such person if such person executes within the aforesaid period of fifteen days a bond with the landholder as surety, for such amount as may be prescribed for his good behaviour during the period of his employment."

According to Section 5[1], a landholder, after employing a person as 'private armed force' is required to furnish information relating to employment within such time and in such manner as may be prescribed to the officer in charge of the police station having jurisdiction over the area. By no stretch of imagination, collection of such

information can be said to be ultra vires the Constitution or an act affecting the fundamental right of the landholder or a member of the Private Armed Force. According to Section 5[2], on receipt of the information, the officer in-charge of the police station would be obliged to make an enquiry and if he opines that such person is not fit to be so employed then such officer shall inform the landholder. In a given case, a person after concealing his bad antecedents may offer himself to be employed as Private Armed Force and a landholder bona fide believing that the person/persons employed as “Private Armed Force” are good may be trapped in a situation from where he cannot wriggle out. If the police agency has been given power to call for information from all the corners and to make an enquiry into the activities of such member of private armed force, then it cannot be said that an enquiry into the activities of such a person would be Unconstitutional. It also cannot be

said that passing of the information from the officer in-charge to the landholder would be bad. In fact, passing of such information would be in observance of principles of natural justice.

16. Sub-section (3) of Section 5 of the Act provides that after receiving information from the officer in-charge the landholder shall within fifteen days from the date of the information would be obliged to terminate the employment of such person/persons as member of his armed force. This provision cannot be said to be ultra vires the Constitution because a person with criminal activities cannot be allowed in the name of a “Private Armed Force” to carry arms/weapons and become a threat to the public. The Proviso to sub-section (3) of Section 5 of the Act provides that a landholder may not terminate the employment of such person if such person executes within a period of 15 days a bond with the landholder as a surety for such amount as may be

prescribed for his good behaviour during the period of his employment. If according to the State Government, the antecedents of a person are not good or he is not deemed fit to be employed, then he is required to be terminated but in a given case on submission of bond for good behaviour and a surety by the landholder who wants to employ him, such a person can be continued. Submission of a bond and to continue in service are to be read together and cannot be read independent of each other. If a person wants to engage a person who is not deemed fit to be a member of Private Armed Force, then the landholder who wants to engage him must become surety of such person because landholder would be undertaking a risk.

17. A bare reading of Section 2(e), 3, 4 and 5 do not show that it puts any check on any of the fundamental right of a Simrakha/member of the Private Armed Force nor does it curtail the

rights or makes an onslaught on the rights of a landholder to have a private armed guard.

18. After giving our due and anxious consideration to the provisions of law and for the reasons aforesaid, we do not find any reason to hold that the abovereferred provisions are ultra vires the Constitution. The petition deserves to be and is accordingly dismissed. Rule is discharged. No costs.

[R.S. Garg, J.]

[M.R. Shah, J.]

RMR.